

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

	X	
	:	
ICD CAPITAL, LLC	:	
individually and derivatively on	:	
behalf of nominal defendant	:	
CodeSmart Holdings, Inc.	:	
	:	
Plaintiff,	:	Civil Action No.: 14-CV-8355 (JFK)
	:	
v.	:	
	:	
	:	
CODESMART HOLDINGS, INC.,	:	
and SHARON FRANNEY,	:	
	:	
Defendants.	:	
	X	

**PLAINTIFF’S MOTION FOR LEAVE TO FILE
ITS PROPOSED SECOND AMENDED COMPLAINT**

Plaintiff, ICD CAPITAL, LLC (“Plaintiff”), individually and derivatively on behalf of nominal defendant CodeSmart Holdings, Inc. (“CodeSmart”), hereby submits this Motion for Leave to File its Proposed Second Amended Complaint (“PSAC”). As set forth more particularly in the accompanying Memorandum of Law, the PSAC would survive a motion to dismiss brought by Defendants and justice requires granting leave to amend because Plaintiff would not receive adequate remuneration under the Mandatory Victims Restitution Act, 18 U.S.C. §§ 3663A, 3664(f)(1)(A).

Under Rule 15(a)(2) of the Federal Rules of Civil Procedure, “... a party may amend its pleading only with the opposing party’s written consent or the court’s leave. The court should freely give leave when justice so requires.” Plaintiff respectfully request that the Court grant Plaintiff’s Motion for Leave to File the Second Amended Complaint.

This Court has invited this filing on the contingency that Plaintiff produce 1) the PSAC with a redline comparing the PSAC to the First Amended Complaint and 2) a memorandum of law explaining how the PSAC would survive a comparable motion to dismiss brought by Defendants. Opinion & Order, ECF No. 80, at 27-28. Accordingly, filed currently herewith is (i) the PSAC, (ii) a PSAC in redline, and (iii) the required Memorandum of Law. Plaintiff appreciates the opportunity to file this Motion, PSAC, and Memorandum of Law. Plaintiff believes the Court, in allowing Plaintiff to file this Motion, PSAC, and Memorandum of Law, demonstrates a basic understanding that (i) a fraud occurred here, (ii) Plaintiff is innocent, and (iii) it is inconceivable that Defendant Franey did not know, or was not negligent or reckless, in not knowing about the fraud.

WHEREFORE, Plaintiff ICD Capital, LLC, respectfully requests that its Motion for Leave to File its Proposed Second Amended Complaint be granted.

Respectfully submitted,

*COUNSEL FOR PLAINTIFF
ICD CAPITAL, LLC*

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CERTIFICATION

The undersigned certifies that on the March 20, 2020, the foregoing was filed electronically and notice of this filing will be sent by email to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's CM/ECF System.

/s/ Joseph M. Pastore III

Joseph M. Pastore III